

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI ex rel.,)
JEREMIAH W. (JAY) NIXON,)
Attorney General of Missouri,)

AND THE MISSOURI DEPARTMENT)
OF NATURAL RESOURCES,)

Plaintiffs,)

v.)

Case No. 04CV165340

MEDICAL WASTE MANAGEMENT, INC.,)
WALLY EL-BECK, IN HIS INDIVIDUAL)
CAPACITY, M.W.A. ENTERPRISE, L.L.C.,)
MOUMEN KUZIEZ, IN HIS)
INDIVIDUAL CAPACITY, AND MAJED)
EL-DWEIK)

Defendants.)

**ENTRY OF DEFAULT JUDGMENT AND THE ASSESSMENT OF CIVIL
PENALTIES AGAINST MEDICAL WASTE MANAGEMENT, INC. AND
WALLY EL-BECK, IN HIS INDIVIDUAL CAPACITY**

This Court, upon review and after the hearing on Plaintiffs' Motion for Default Judgment against defendants Medical Waste Management, Inc. and Wally El-beck, in his individual capacity, and for the assessment of civil penalties, finds that:

1. The State's Petition for Injunction, Civil Penalties and Breach of Contract in the above-styled action was filed with this Court on March 18, 2004.

2. Defendant Medical Waste Management, Inc. was subsequently served with a summons and copy of the petition on April 3, 2004.

3. Defendant Wally El-beck was subsequently personally served with a summons and copy of the petition on April 3, 2004.

4. On March 18, 2004, defendant Wally El-beck filed a voluntary bankruptcy petition in the U.S. Bankruptcy Court of the Eastern District of Arkansas.

5. On March 25, 2004, defendant Medical Waste Management, Inc. filed a voluntary bankruptcy petition in the U.S. Bankruptcy Court of the Eastern District of Arkansas.

6. The first protection given to the debtor by the Bankruptcy Code is an automatic prohibition against third parties from taking any action to collect debts owed before the bankruptcy was filed. 11 U.S.C. §362(a). But the bankruptcy code specifically limits the reach of the automatic stay by excepting eighteen different types of litigation or creditor actions from the stay. These exceptions to the stay are found in 11 U.S.C. §362(b). The automatic stay triggered by Defendants' bankruptcy filing does not apply to the lawsuit pending in state court because this suit was brought by the government to enforce its police and regulatory powers, specifically its power to enforce the state's environmental protection laws codified at § 260.200 to § 260.245, RSMo. This litigation falls squarely within the "police and regulatory powers" exception listed in 11 U.S.C. §362(b)(4), which states:

(b) The filing of a petition under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, does **not** operate as a stay --

...

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of **the commencement or continuation of an action or proceeding by a governmental unit** or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, **to enforce such governmental unit's or organization's police and regulatory power**, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

...

(Emphasis added).

When examining the legislative history underlying 11 U.S.C. §362(b)(4), courts have consistently recognized that Congress specifically contemplated suits to enforce environmental protection laws as the type of police and regulatory actions excepted from the automatic stay:

Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police and regulatory powers. Thus where a governmental unit is suing a debtor to prevent or stop violation of **fraud, environmental protection**, consumer protection, safety, or similar police and regulatory laws, **or attempting to fix damages for violation of such a law**, the action or proceeding is not stayed under the automatic stay.

In re Commonwealth Companies, Inc., 913 F.2d 518, 522 (8th Cir. 1990), *citing*, S.Rep. No. 989, 95th Cong., 2d Sess. 52, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5838; H.R.Rep. No. 595, 95th Cong., 2d Sess. 343, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6299 (emphasis added).

Courts have also clarified that the government's suit may seek injunctive relief as well as money judgments for restitution, civil penalties, and costs and may obtain the entry of these judgments without being barred by the stay. So long as the government does not seek to collect the monetary portion of its judgment, the stay does not apply. *In re Commonwealth Companies, Inc.*, 913 F.2d at 522-23; *In re First Alliance Mortgage Company*, 263 B.R. 99, 114 (9th Cir. BAP 2001); *In re Commonwealth Companies, Inc.*, 913 F.2d 518, 520 (8th Cir. 1990); *In re Nelson*, 240 B.R. 802, 805-06 (Bankr.D.Me.1999); *In re Family Vending, Inc.*, 171 B.R. 907, 909 (Bankr.N.D.Ga.1994); *In re Mickman*, 144 B.R. 259, 261 (E.D. Pa. 1992); and *In re Hughes*, 87 B.R. 49, 52 (Bankr.S.D.Ohio1988).

7. On May 10, 2005, this Court entered, ordered and approved the Amended Proposed Scheduling Order which required defendants Medical Waste Management, Inc. and Wally El-beck to file an answer pursuant to Supreme Court Rule No. 55.07 within twenty (20) days.

8. Defendants Medical Waste Management, Inc. and Wally El-beck have failed to file an answer to any of the allegations pled in the petition.

9. Supreme Court Rule 55.25 governs the timing of pleadings and provides in relevant part that:

(a) Answer - When Filed. A defendant shall file an answer within thirty days after the service of the summons and petition, except where service by mail is had, in which event a defendant shall file an answer within thirty days after the acknowledgment of receipt of summons and petition or return registered or certified mail receipt is filed in the case or within forty-five days

after the first publication of notice if neither personal service nor service by mail is had.

10. Supreme Court Rule 55.09 explains the effect of the party's failure to file an answer:

Specific averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleadings. Specific averments in a pleading to which no responsive pleading is required shall be taken as denied.

11. In light of these defendants failure to file an answer with this Court, these defendants are subject to the entry of an Order of Default Judgment pursuant to Supreme Court Rule 74.05. Supreme Court Rule 74.05 provides in pertinent part:

(a) Entry of Default Judgment. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, upon proof of damages or entitlement to other relief, a judgment may be entered against the defaulting party. The entry of an interlocutory order of default is not a condition precedent to the entry of a default judgment.

12. By virtue of defendants Medical Waste Management, Inc.'s and Wally El-beck's failure to file an answer or responsive pleading within thirty (30) days after service of the summons and within the time frame set forth in the May 10, 2005 Amended Proposed Scheduling Order, defendants Medical Waste Management, Inc. and Wally El-beck are deemed in default and the facts alleged in plaintiff's Petition are deemed admitted.

13. Furthermore, an evidentiary hearing and penalty hearing was properly noticed and heard on July 18, 2005, and the State of Missouri, by and through Assistant Attorney General, Harry D. Bozoian, called Valerie Garrett, Environmental Specialist with the

Missouri Department of Natural Resources, as a witness. Defendants Medical Waste Management, Inc. and Wally El-beck did not appear, nor was any evidence presented on their behalf. Ms. Garrett performed a penalty calculation (State's Exhibit 1, incorporated herein) for defendants Medical Waste Management, Inc. and Wally El-beck in regard to this matter and testified to the formulation of said penalty.

14. The penalty calculation was based on defendants Medical Waste Management, Inc.'s and Wally El-beck's failure to comply with the Missouri Solid Waste Management Law and Missouri Hazardous Waste Law with regard to the storage of infectious waste in Missouri.

15. Furthermore, Ms. Garrett testified that defendants Medical Waste Management, Inc. and Wally El-beck violated the Missouri Solid Waste Management Law and Missouri Hazardous Waste Law by illegally transporting and storing infectious waste in Missouri in violation of §§ 260.200 to 260.245, RSMo, and the regulations and rules promulgated thereunder.

16. This Court may assess a civil penalty not to exceed One Thousand Dollars (\$1,000.00) per day for each violation of the law or regulations promulgated thereunder as authorized by in violation of §§ 260.200 to 260.245, RSMo, and the regulations and rules promulgated thereunder.

17. Venue in this action is proper under (§ 644.076.1, RSMo?).

18. Plaintiff does not have an adequate remedy at law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

19. The Court finds that the terms of this judgment protects the public's interest.

20. For purposes of this decree, this Court has jurisdiction over the subject matter of this action and over the parties hereto. This judgment covers matters alleged in plaintiff's Petition for Injunctive Relief and Civil Penalties. The subject matter of this action involves allegations of violations of the Missouri Solid Waste Management Law and Missouri Hazardous Waste Law, Chapter 260, RSMo and the regulations promulgated pursuant thereto, with respect to with regard to the transportation and storage of infectious waste in Missouri.

21. The provisions of this judgment shall be binding upon the parties to this judgment as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or will be acting in concert or privity with, on behalf of the parties to this judgment or their agents, servants, employees, heirs, successors, and assigns.

22. Defendants Medical Waste Management, Inc. and Wally El-beck are permanently ordered and enjoined to obey, abide by and comply with this Order, and Chapter 260, RSMo, and the rules and regulations promulgated thereunder (the "Missouri Solid Waste Management Law and Missouri Hazardous Waste Law").

23. Defendants Medical Waste Management, Inc. and Wally El-beck are ordered to cease illegally transporting and storing infectious waste within the State of Missouri.

24. Furthermore, defendant Medical Waste Management, Inc. is assessed a civil penalty in the amount of Two Hundred Twenty Seven Thousand Dollars (\$227,000.00).

25. Furthermore, defendant Wally El-beck is assessed a civil penalty in the amount of Two Hundred Twenty Seven Thousand Dollars (\$227,000.00).

26. The Court shall retain jurisdiction over this matter to ensure compliance with the foregoing provisions.

27. This Judgment does not discharge any other potentially responsible parties.

28. All costs associated with this action shall be paid by defendants Medical Waste Management, Inc. and Wally El-beck.

IT IS SO ORDERED.

Circuit Judge

Dated this _____ day of _____, 2005.